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No. 94-1702

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In the Supreme Court of the United States

OCTOBER TERM, 1994

FRANK J. KELLEY, ATTORNEY GENERAL OF MICHIGAN, ET AL., PETITIONERS

v.

IVAN SELIN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

The Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10198(a), required the Nuclear Regulatory Commission (NRC) to establish procedures for the generic approval of storage containers for spent nuclear fuel "without, to the maximum extent practicable, the need for additional site-specific approvals." Pursuant to the NWPA, the NRC determined that it was practicable generically to approve certain rugged and durable spent fuel storage casks for use at any plant site without the need for site-specific approvals. The NRC thus promulgated a final rule in 1990 generically approving four cask designs, issuing a general license for their use at any licensed power reactor site, and establishing procedures for future generic approval of additional designs. In 1993, the NRC promulgated a rule adding a new cask design to the list of those it had generically approved. The questions presented are:

1. Whether, notwithstanding the Hobbs Act's 60-day limitation period, petitioners' 1993 challenge to the 1990 NRC rule was timely because the NRC relied on that rule to approve a new cask design in 1993.

2. Whether site-specific adjudicatory hearings are required under the Atomic Energy Act of 1954, 42 U.S.C. 2239(a)(1)(A) (Supp. V 1993), and site-specific environmental impact statements are required under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, before a utility may use casks generically licensed for use at any facility without site-specific approvals.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-40a) is reported at 42 F.3d 1501. The opinion of the district court (Pet. App. 41a-51a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 11, 1995. The petition for a writ of certiorari was filed on April 11, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Congress enacted the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10101 *et seq.*, in re-

sponse to growing concerns that the nation lacked facilities for the permanent disposal of high-level nuclear waste, including spent fuel from nuclear power plants licensed by the Nuclear Regulatory Commission (NRC). Without a means for permanent disposal of accumulating spent fuel, utilities stored it at nuclear plant sites in pools designed only for temporary storage of limited amounts of spent fuel. Congress recognized that the spent fuel pools at several nuclear power plants were filling up, creating a risk of premature shutdown of those plants. See Pet. App. 39a.

The NWPA set a schedule for the siting, construction, and operation of permanent federal repositories for the disposal of high-level nuclear waste. 42 U.S.C. 10131-10145. That Act also addressed the immediate need for additional spent fuel storage capacity by speeding the development, approval, and deployment of interim on-site storage technologies. See generally 42 U.S.C. 10151-10157. In that regard, the NWPA directed the Secretary of Energy to establish a demonstration program for the dry storage of spent fuel at existing nuclear plants in "fuel storage casks, caissons, or silos." 42 U.S.C. 10198(a). The objective of the demonstration program was to establish "one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." *Ibid.* The NWPA further provided that the "Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under [42 U.S.C. 10198(a)] for use at the site of any civilian nuclear power reactor." 42 U.S.C. 10153.

The NRC found that it is practicable to construct casks sufficiently durable and resistant to extreme environmental conditions as to be usable for interim spent fuel storage at any reactor site. 55 Fed. Reg. 29,183 (1990). Thus, in 1990, the NRC implemented NWPA's statutory directive by promulgating a rule referred to as Subpart K. 10 C.F.R. Pt. 72 Subpt. K. That rule granted generic approval of four spent fuel storage cask designs, 55 Fed Reg. 29,191-29,193; 10 C.F.R. 72.214 (1991), and generally licenses utilities to use any approved cask at any licensed nuclear power plant for a period of up to 20 years, provided that the utility meets certain detailed conditions, 10 C.F.R. 72.210, 72.212. At the same time, the NRC promulgated Subpart L, which established regulatory procedures for adding cask designs to the approval list. 10 C.F.R. Pt. 72 Subpt. L. See 55 Fed. Reg. 29,181, 29,193-29,194 (1990).

The NRC determined that Environmental Impact Statements (EIS) were not required for storage of spent fuel in NRC-approved casks at reactor sites, and that only an overall Environmental Assessment (EA) was required. 55 Fed. Reg. 29,187 (1990); see 10 C.F.R. 51.23. The NRC explained that "free-standing casks, being very strong and massive structures, are independent of the effects of site-specific natural phenomena." 55 Fed. Reg. 29,186 (1990) (quoted in Pet. App. 23a). The NRC thus published an EA with the 1990 rule. The EA reviewed more than 30 years of experience in the United States and abroad with dry storage of spent fuel, and found that on-site use of casks meeting the rule's rigorous criteria would have insignificant environmental impacts. C.A. App. 464-482; see Gov't. C.A. Br. 7-8.

When the NRC promulgated its final rule in 1990, it had under consideration an application by the Consumers Power Company (Consumers) for a license amendment to allow Consumers to construct and use dry casks at the Palisades Nuclear Plant in Van Buren County, Michigan (Palisades). Pet. App. 4a-5a. The NRC had issued a notice of opportunity for hearing on the proposed license amendment, and had received a number of responses. On August 17, 1990, when the new rule became effective, however, Consumers withdrew its application on the ground that "the need for a site-specific proceeding is mooted by adoption of the new rule." Consumers' Opp. App. 2-3. Consumers' withdrawal letter to the NRC explained that "the Company * * * intends to utilize the general license granted in new Subpart K when it is able to satisfy the conditions of the general license," and stated that it was sending copies of its letter to all those who petitioned for a hearing on its proposed license amendment. *Ibid.*; see also 55 Fed. Reg. 35,384 (1990) (noting availability of letter for public inspection). Despite the public notice of Consumers' intent to construct storage casks at Palisades under Subpart K without further site-specific approval, neither petitioners nor any other persons then sought review of Subpart K.

In April, 1991, the manufacturer of a cask design referred to as VSC-24 applied to the NRC to add that design to the list of cask designs the NRC had generically approved. The manufacturer also then requested an exemption from NRC regulations to permit construction of VSC-24 casks at the Palisades site before NRC's generic approval of the cask. Notice of that exemption request was published in the *Federal Register*, 56 Fed. Reg. 41,870 (1991),

and the NRC received no objections to the proposed exemption.

In June, 1992, the NRC issued a notice of proposed rule, stating its intent to grant generic approval for the VSC-24 cask. 57 Fed. Reg. 28,645-28,647 (1992). In December, 1992, petitioner Frank J. Kelley, Attorney General of Michigan, wrote to the NRC Chairman, respondent Ivan Selin, to express his concerns about the proposed use of VSC-24 casks at Palisades. Corrected Index of Record No. 273 Attach. Kelley acknowledged that "the NRC is not required to hold a public hearing," but asked that the NRC nonetheless exercise its discretion to hold an adjudicatory hearing. *Ibid.* The NRC declined to do so, but did conduct an informal public meeting at which petitioner Kelley and others presented their views and NRC officials responded to questions. See 58 Fed. Reg. 17,950 (1993). On April 7, 1993, the NRC published its final rule adding the VSC-24 cask to the list of approved designs.

2. On May 4, 1993, three days before the effective date of the rule adding the VSC-24 to the list of generically approved casks, petitioners filed a complaint in district court seeking an injunction and a temporary restraining order prohibiting Consumers from loading fuel into VSC-24 casks. The district court dismissed the action on May 10, 1993, for lack of jurisdiction (Pet. App. 41a-52a), and transferred the case to the court of appeals (*id.* at 53a-54a).

3. In the court of appeals, petitioners contended that the NRC's failure to hold an adjudicatory hearing on Consumers' proposed use of VSC-24 casks violated Section 189(a) of the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2239(a)(1)(A) (Supp. V 1993), and that the Commission's failure to issue a site-specific environmental impact statement violated

the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C).

The court of appeals denied petitioners' claims. The court held that no adjudicatory hearing regarding the proposed use of VSC-24 casks at Palisades was required. The generic approval of designs for spent fuel storage casks was, the court held, "exactly the type of NRC decision which may be the subject of generic rulemaking" under the NWPA, 42 U.S.C. 10198(a). Pet. App. 22a. In any event, the Atomic Energy Act, upon which petitioners relied, "nowhere describes the content of a hearing or prescribes the manner in which this 'hearing' is to be run." Pet. App. 17a (quoting *Union of Concerned Scientists* v. *United States Nuclear Regulatory Comm'n*, 920 F.2d 50, 53 (D.C. Cir. 1990)); see also Pet. App. 21a-22a ("nothing in the applicable statutes or the relevant precedents compels the NRC to hold a formal adjudicatory hearing").[1] The court pointed out that, "[a]lthough the NRC denied petitioners' request for an adjudicatory hearing concerning the use of the VSC-24 casks at Palisades, the NRC did hold a 'hearing' at which Michigan citizens were able to comment."

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[1] Section 189(a) of the Atomic Energy Act, 42 U.S.C. 2239(a)(1)(A) (Supp. V 1993), provides:

> In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, * * * the [Nuclear Regulatory] Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

Pet. App. 21a. The court of appeals also observed that, even insofar as site-specific issues are concerned, hearing rights under the AEA are limited to issues "material to [a] licensing decision," and that "[t]here [wa]s no licensing decision being made here," where no greater operating capacity was granted, and no safety requirements or other rules were changed. *Id.* at 25a-26a.

The court of appeals also upheld the NRC's decision to issue only a generic Envionmental Assessment on the environmental impact of dry cask storage. Pet. App. 32a-39a. The court held that the NRC had sufficient grounds for its conclusion that the 1993 rule approving the VSC-24 cask was not a "major Federal action significantly affecting the quality of the human environment" and that an environmental impact statement was therefore not required under the National Environmental Policy Act, 42 U.S.C. 4332(2)(C). Pet. App. 32a.[2] The court concluded that, in its EA, "the NRC did take a 'hard look' at the environmental consequences of its action, as required by NEPA." *Id.* at 39a. The court rejected petitioners' NEPA claim as "essentially an attack on the policy choice made by Congress, and embodied in the NWPA," to empower the NRC to promulgate rules generically authorizing on-site spent nuclear fuel storage. *Ibid.*[3]

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[2] Section 102 of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C), requires federal agencies to include an Environmental Impact Statement in every recommendation or report on "major Federal actions significantly affecting the quality of the human environment."

[3] The court of appeals also observed that petitioners acknowledged the propriety of a generic environmental as-

To the extent that petitioners' claims required invalidation of the procedures for generic approvals established by the NRC's 1990 rule, the court of appeals held that they were barred by the Hobbs Act's 60-day period of limitation. Pet. App. 26a-27a n.3. The court of appeals rejected the argument that, under *Reno* v. *Catholic Social Services, Inc.*, 113 S. Ct. 2485 (1993), and *Lujan* v. *National Wildlife Fed'n*, 497 U.S. 871 (1990), petitioners could not have challenged the 1990 rule until 1993, when the NRC granted generic approval for the particular cask design Consumers proposed to use at Palisades. The court stated:

> In this case, the NRC's 1990 rule had an immediate impact. After promulgation of the rule, the very procedures about which petitioners now complain were in place, and any civilian reactor in the nation, including Palisades, was free to use the approved storage systems.

Pet. App. 27a n.3. The court also rejected petitioners' contention that the NRC "reopened" the 1990 rule (and thereby again subjected it to review) by promulgating the 1993 rule. The court held that the NRC in its 1993 rule merely added a new form of storage cask to the list of approved systems, and did not thereby "reconsider[] the propriety of its grant of a general license" or "restructur[e] its earlier rules." *Ibid.*

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sessment "regarding truly generic issues posed by the VSC-24 casks." Pet. App. 32a (quoting Pet. C.A. Br. 43). Other than a "conclusory statement in their brief on appeal," however, the court noted that "petitioners have not identified, much less established, any factor requiring a site-specific analysis before the VSC-24 cask could be added to the list of approved casks." Pet. App. 37a.

ARGUMENT

The NRC's generic rather than site-specific procedures for approving dry storage casks for interim spent fuel storage properly implemented the mandate of the Nuclear Waste Policy Act. That procedural approach is consistent with the NRC's obligations under the Atomic Energy Act and National Environmental Policy Act, and no court of appeals has held to the contrary. To the extent that petitioners sought in 1993 to challenge the NRC's 1990 final rule adopting a generic approach to cask design approvals, the court of appeals correctly held that their claims are time-barred. No further review is warranted.

1. a. The court of appeals correctly concluded that petitioners untimely challenged, and thus are bound by, the procedural framework the NRC established in its 1990 rule providing for generic approval of spent fuel storage casks. It was only when Consumers Power Company in 1993 began to use casks the NRC had generically approved that petitioners sought site-specific consideration. To the extent that petitioners' asserted harm flows from the 1990 rule, their challenge comes too late.

Challenges to NRC rules ordinarily must be filed within 60 days of their issuance. Appellate jurisdiction to review "any proceeding for the issuance or modification of rules and regulations dealing with the activities of [NRC] licensees" is governed by the Hobbs Act. 28 U.S.C. 2342(4); 42 U.S.C. 2239 (a)(1)(A) (Supp. V 1993).[4] The Hobbs Act pro-

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[4] The Hobbs Act grants the courts of appeals "exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of" all "final orders of the [Nuclear Regulatory] Commission made reviewable by

vides that "[a]ny party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order." 28 U.S.C. 2344.[5]

As petitioners acknowledged, Consumers gave notice, in a letter to the NRC dated August 17, 1990, of its withdrawal of its site-specific application. See Pet. C.A. Br. 11-12. That same letter explicitly stated Consumers' intent to utilize the general license granted in new Subpart K. Thus, contrary to petitioners' claim that Consumers in 1990 "apparently abandoned" its plan to use dry storage casks at Palisades (Pet. 5), Consumers in fact then gave notice that it was withdrawing its site-specific application only because the new rule had rendered that procedure unnecessary. At that time, the Hobbs Act's 60-day period had not yet run. Petitioners could have, but did not, request that the NRC reconsider the 1990 rule at that time. If such a request had been denied, petitioners would have had a timely opportunity to challenge the rule in federal court.

Petitioners assert that the 60-day limitations period ran not from the promulgation of the 1990 rule, but from the date in 1993 when the NRC added the

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section 2239 of title 42." 28 U.S.C. 2342(4). The Atomic Energy Act, 42 U.S.C. 2239(b) (Supp. V 1993), defines such reviewable orders to include "[a]ny final order entered in any proceeding of the kind specified in [42 U.S.C. 2239(a)]," which in turn refers to "any proceeding for the issuance or modification of rules and regulations dealing with the activities of [NRC] licensees."

[5] Even if the 1990 NRC rule were subject not to the Hobbs Act's 60-day time limit, but to the 180-day limit established by the Nuclear Waste Policy Act (NWPA), 42 U.S.C. 10139(c), the time in which to seek review had long since expired when petitioners challenged that rule in 1993.

VSC-24 cask design to the list of those it had generically approved. Relying on *Reno* v. *Catholic Social Services, Inc.*, 113 S. Ct. 2485 (1993), and *Lujan* v. *National Wildlife Fed'n*, 497 U.S. 871 (1990), petitioners reason that before 1993, they had no ripe claim against the 1990 rule because it had not yet had a concrete effect on them. They thus contend that their opportunity to challenge the 1990 rule should be deemed to have first arisen in 1993. The court of appeals correctly rejected that contention.

This Court in *Catholic Social Services* considered claims raised by a class of aliens challenging Immigration and Naturalization Service (INS) regulations that potentially deprived them of the ability to obtain temporary residence status. The Court held the aliens' claims unripe because temporary residence status is not "automatically bestowed on eligible aliens"; rather, each alien desiring temporary residence is required to "take further affirmative steps, and to satisfy criteria beyond those addressed by the disputed regulations." 113 S. Ct. at 2496. Here, in contrast, "the NRC's 1990 rule had an immediate impact." Pet. App. 26a n.3. The 1990 rule granted a general license for use of approved casks without regard to site-specific considerations, and established the generic procedures by which the NRC added the VSC-24 cask to the list of approved casks without a site-specific hearing or environmental review. Petitioners' situation is thus precisely the converse of that of the aliens in *Catholic Social Services*. Petitioners' claims were not unripe due to an unmet requirement of "further affirmative steps"; rather, their claims address the agency's *failure* to require any further steps before Consumers availed itself of

the benefits of the 1990 rule.[6] When no further steps are required to trigger a regulation's challenged effect, the regulation is subject to immediate review.

This Court's decision in *Lujan* is also not to the contrary. The Court there rejected an amorphous challenge to the Bureau of Land Management's (BLM) land withdrawal review program because, in seeking to challenge that "program," petitioners did not "refer to a single BLM order or regulation, or even to a completed universe of particular BLM orders and regulations." 497 U.S. at 890. The time-barred claims in this case, in contrast, addressed the clearly identifiable 1990 NRC rule.[7] Moreover, the Court in *Lujan* observed that, unlike the Administrative Procedure Act that governed there, "[s]ome statutes permit broad regulations to serve as the 'agency action,' and thus to be the object of judicial review directly, even before the concrete effects normally required for APA review are felt." 497 U.S. at 891. As the court of appeals here recognized, the Hobbs Act amounts to just such specific statutory authorization of challenges to NRC regulations. Pet.

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[6] Petitioners' challenges to such categorical approval are thus more closely analogous to claims that this Court in *Catholic Social Services* recognized might well have been ripe —those of aliens subject to a categorical "front-desking" policy of prefiling rejection of applications of aliens whom INS personnel forecast would be ineligible under the challenged regulations. 113 S. Ct. at 2497-2499.

[7] The *Lujan* Court acknowledged that the claim of a member of one of the petitioner organizations would "no doubt" be ripe for review once a mining permit application she identified as pending was granted. 497 U.S. at 892 n.3. Under that logic, petitioners' claims in this case were ripe as of 1990, because no site-specific application was required.

App. 26a n.3. *Lujan* is therefore inapplicable by its own terms.

Even if petitioners were correct that some action in addition to the 1990 rule's generic approval and general licensing was required before their claims would be ripe, such action took place in 1991. The manufacturer of the VSC-24 casks then sought generic approval of the cask design and, in an action announced by the NRC in a Federal Register notice, asked the NRC for an exemption allowing immediate construction of VSC-24 casks at the Palisades site pending final approval by NRC of the cask design. 56 Fed. Reg. 41,870 (1991). Under their own timeliness theory, petitioners could at that juncture have objected to an exemption, requested reconsideration of the 1990 rule, and/or filed a petition under 10 C.F.R. 2.206 protesting application of the generic approach of the 1990 rule to the Palisades site. They took no such steps.

b. The court of appeals correctly held that the NRC's 1993 rule did not restart the period for seeking judicial review of the 1990 rule under the "reopener doctrine" set forth in *Edison Elec. Inst.* v. *United States EPA*, 996 F.2d 326, 331-332 (D.C. Cir. 1993); see also *Public Citizen* v. *NRC*, 901 F.2d 147, 150-153 (D.C. Cir.), cert. denied, 498 U.S. 992 (1990); *State of Ohio* v. *United States EPA*, 838 F.2d 1325, 1328-1329 (D.C. Cir. 1988). In its 1993 rule, the NRC did not reconsider the propriety of the 1990 rule, but "merely add[ed] a new form of storage cask to its list of approved systems." Pet. App. 26a n.3. In proposing the 1993 rule, the NRC referred to the 1990 rule as setting the established procedural framework for generic approval of new casks; the NRC did not indicate any intent to reconsider the

generic-approval approach as such. 57 Fed. Reg. 28,645-28,647 (1992). In responding to public comments, the NRC expressly noted that commenters "discussed topics that were not the subject of this rulemaking," including whether "[a] formal hearing should be required at each site using dry casks." 58 Fed. Reg. 17,950-17,951 (1993). In *Edison*, by contrast, the D.C. Circuit found that the agency reopened consideration of an existing rule by soliciting additional comments on it and by advancing a possible "alternative approach" to that rule. 996 F.2d at 329-330, 332. Each of the other cases upon which petitioners rely (Pet. 18-20) similarly based its timeliness decision on findings that the agency had indicated its intent to reconsider an existing rule. Given the absence of any such indication here, the reopener doctrine does not apply.

2. a. The court of appeals correctly held that petitioners were not entitled to a site-specific licensing hearing under the Atomic Energy Act, 42 U.S.C. 2239(a)(1)(A) (Supp. V 1993). The Nuclear Waste Policy Act directed the NRC to determine whether it was technologically feasible to construct dry storage containers for spent nuclear fuel that would be sufficiently strong and durable to withstand any environmental conditions at existing commercial nuclear plants, thereby obviating the need for site-specific evaluations before the containers could be used for interim storage. The NWPA thus called upon the NRC to establish procedures for the generic approval of standardized spent fuel storage technologies "without, to the maximum extent practicable, the need for additional site-specific approvals." 42 U.S.C. 10198(a). The NRC determined that devel-

opment of such containers was indeed feasible, and implemented the NWPA by issuing a general license for four cask designs specifying the detailed conditions under which the casks can appropriately be used at any commercial nuclear plant site. To the extent that such generic approval overrides site-specific hearings otherwise available under the Atomic Energy Act, Congress clearly intended that result. Pet. App. 22a.

The court of appeals correctly held that the AEA did not, in any event, require an adjudicatory hearing under these circumstances, and no court of appeals has held to the contrary. There was no site-specific licensing decision at issue. Pet. App. 25a-26a. Moreover, the NRC provided an opportunity for petitioners to be heard in the rulemaking regarding the proposed use of VSC-24 casks at Palisades. *Id.* at 21a. Nothing in the AEA specifies that an informal hearing is inadequate in such circumstances, or that the kind of formal adjudicatory hearing petitioners seek is required.[8]

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[8] Petitioners' reliance on *Nuclear Information Resource Service* v. *NRC*, 969 F.2d 1169, 1173 (D.C. Cir. 1992) (en banc), depends on their untenable assertion that the installation of spent fuel storage casks is "just like the issuance of a construction permit, expansion of a wet pool, or licensing of a new reactor." Pet. 25. In the NWPA, however, Congress treated deployment of dry storage technology quite differently from the construction or expansion of nuclear reactors, and did so for good reason. The premise of Congress's authorization of generic, non-site-specific licensing of dry storage casks was that such casks might be manufactured so as to be secure at any existing reactor site. Construction and licensing of nuclear reactors themselves, and expansion of wet pools for storage of spent fuel, in contrast, generally present site-specific issues not amenable to fully generic regulatory treatment.

b. The court of appeals also correctly decided that the National Environmental Policy Act does not require an Environmental Impact Statement here. There is no basis for petitioners' contention (Pet. 26-29) that the decision below conflicts with *Baltimore Gas & Elec. Co.* v. *Natural Resources Defense Council, Inc.*, 462 U.S. 87 (1983), and *Limerick Ecology Action, Inc.* v. *United States NRC*, 869 F.2d 719 (3d Cir. 1989). This Court in *Baltimore Gas* upheld a generic NRC rule directing licensing boards to assume, for purposes of the consideration and disclosure of environmental impacts under NEPA, that permanent storage of certain nuclear wastes would have no significant environmental impact. The Court's deference to NRC expertise in that case, and its recognition of the appropriateness in certain circumstances of a generic approach to disclosure of environmental impacts under NEPA, support the result here.

Relying on *Limerick*, petitioners assert that the *Baltimore Gas* approach is appropriate only where the issues are indeed generic, and that "where there is a legitimate question of site-specific linkage, the generic approach will not suffice." Pet. 28. In petitioners' view, "the placement of the VSC-24 casks at Palisades has serious site-specific implications." *Ibid.* The generic approach embodied in the NRC's 1990 rule, however, represents the Commission's considered view to the contrary. The premise of that rule is the NRC's finding that casks for dry storage of nuclear waste can be deployed under a general license without significant site-specific environmental implications. As the court of appeals noted, "this type of technical decision by the NRC, operating at the frontiers of science, is entitled to great deference by

the courts." Pet. App. 38a (citing *Baltimore Gas*, 462 U.S. at 103).[9]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[9] Petitioners seek to bolster their NEPA claim by reference to extra-record documents, including a December 1993 letter from an official of the Environmental Protection Agency and a February 1994 memorandum from an NRC staff member. Pet. 29. The court of appeals denied petitioners' motion to supplement the record with those documents, however, and petitioners do not challenge that ruling here.

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